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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-206840

DATE: April 20, 1982

MATTER OF: Cedar Canyon Tree Service

DIGEST:

2151-9

Army correctly rejected bid as nonresponsive where through oversight bidder did not effectively acknowledge receipt of an amendment containing a wage rate determination because it inserted in the "Acknowledgement of Amendments" section of its bid the number of a different solicitation issued by another agency. Under the circumstances, the Government legally could not require the bidder to pay the wage prescribed in the amendment to the Army's solicitation.

Cedar Canyon Tree Service protests the rejection of its bid under invitation for bids (IFB) No. DAKF06-82-B-0049 issued by the Department of the Army, Fort Carson, Colorado for tree trimming and pruning. Since the protester's initial submission demonstrates that the protest is without legal merit, we have reached our decision without requesting an agency report. Wilderness Research Institute, Inc. B-203326, June 19, 1981, 81-1 CPD 512.

After bid opening, Cedar Canyon inquired of the contracting officer as to the status of the procurement and was told that its bid had been rejected as nonresponsive. Cedar Canyon protested to the contracting officer; the protest was denied by letter of March 5, 1982, in which the contracting officer notified the protester that its bid was nonresponsive because it failed to acknowledge receipt of amendment No. 0001, dated January 29, 1982, which contained a wage rate determination. In the Army's view, the protester's failure to acknowledge receipt of the amendment could not be waived as a minor informality because of its substantial impact on the price of the contract. The protester concedes that it failed to acknowledge

receipt of the amendment but contends that the agency failed to address the reason given for its error.

The protester states it attended the on-site pre-bid inspection tour given at Fort Carson, had received amendment No. 0001 containing the wage determination prior to preparing its bid, and considered the wage determination in calculating its bid price. During this same period, the protester also was responding to IFB 691-107-82, issued by the Veterans Administration, which too was amended to incorporate a wage determination. The protester asserts that when it filled in the "Acknowledgement of Amendments" portion of the Army's IFB, it erroneously inserted the number of the Veterans Administration's IFB. It realized it had made this error while filling out its bid and meant to correct it after completing the remainder of the bid form but forgot to do so. The protester asserts that its bid should be considered for award because it actually took the wage determination into account, it offered a more advantageous price to the Government and it "attempted" to acknowledge receipt of the amendment.

We must deny the protest. It is well settled that the failure to acknowledge receipt of an IFB amendment containing a wage rate determination cannot be waived as a minor informality or irregularity. This is because absent acknowledgment, the bidder legally could not be required by the Government to pay the wages prescribed in the amendment. McHenry Cooke, B-196138, January 28, 1980, 80-1 CPD 74.

There is nothing in the protester's bid which unequivocally conveys an intent to be bound by the contents of amendment No. 0001. Even viewing the situation in the light most favorable to the protester, we think the bid was ambiguous as to the bidder's intent and, for the reasons given below, a bidder is not permitted to explain ambiguities in its bid after bids have been opened.

Cedar Canyon states that it protested to our Office because, in rejecting its bid, the contracting officer did not indicate that she had considered the mitigating circumstances raised by the firm: that it had, in fact, received and considered the amendment prior to submitting its bid, that its failure to acknowledge receipt of the

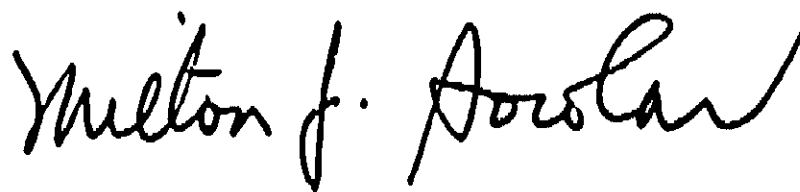
amendment was the result of a mistake, and that it offered the lowest price. We suspect that the contracting officer did consider these circumstances but concluded, as we do, that they do not provide any basis for waiving Cedar Canyon's failure to acknowledge receipt of the amendment. While it may have been helpful for the contracting officer to have explained the reasons for her conclusions in more detail, the fact that she did not do so does not affect the correctness of her decision.

The number which Cedar Canyon inserted in the "Acknowledgement of Amendments" section of its bid had no relationship to the Army's IFB and is understandable only by reason of the firm's post-bid opening explanation. A basic principle of Federal procurement law is that all bidders must be treated fairly and equally, and it is contrary to this principle to allow a bidder, in effect, to decide the acceptability of its bid by offering an explanation of its intent after all its competitors' prices have been exposed. See Pensacola Engraving Company, B-200712, February 27, 1981, 81-1 CPD 139. Although we have no reason to question Cedar Canyon's account of what occurred, in fairness to the other bidders it cannot now "cure" the nonresponsiveness of its bid.

Similarly, the fact that a mistake contributed to the nonresponsiveness of the protester's bid affords no basis for relief. Based on the same principle of fair treatment, we have held that the procedures for the correction of mistakes in bids may not be used to transform a nonresponsive bid into a responsive one. See Pensacola Engraving Company, supra.

Although, as Cedar Canyon points out, the Army's rejection of its bid resulted in the agency's paying more for these services, the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement if a material deficiency is waived. See 1010 Incorporated of Alamogordo, B-204742, December 21, 1981, 81-2 CPD 486.

The protest is denied.

*for*   
Comptroller General  
of the United States